



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: 3M-X-TRA LIGHT

File: B-249701

Date: October 23, 1992

Jerry A. Kuzma for the protester.  
Dennis Mullins, Esq., General Services Administration, for  
the agency.  
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General Counsel, GAO, participated in the preparation of the  
decision.

### DIGEST

Where invitation for bids contained the standard tax clause requiring that bid prices include all applicable federal, state, and local taxes, a bid that was qualified with the phrase "Sales tax not included," with no indication elsewhere in the bid as to what specific tax in what amount was excluded, was properly rejected as nonresponsive.

### DECISION

3M-X-TRA LIGHT, a division of Sun Specialist International, Inc. (Sun), protests the rejection of its bid as nonresponsive and the award of the contract to Guild Electric, Inc. under invitation for bids (IFB) No. GS-07P-92-HUC-0062, issued by the General Services Administration to retrofit lighting at the Federal Center, Warehouse Nos. 1 and 3, in Fort Worth, Texas. The protester claims that its low bid was improperly rejected as nonresponsive.

We dismiss the protest.

The IFB included Federal Acquisition Regulation § 52.229-3, the standard tax clause, which provides that the contract price "includes all applicable [f]ederal, [s]tate and local taxes and duties." Bids were opened on July 7, 1992, with Sun the apparent low bidder. On July 8, 1992, Sun was informed that its bid was rejected as nonresponsive because it qualified its bid by inserting the phrase, "[s]ales tax not included," immediately below its bid price.

It is essentially the protester's position that since it sought advice from both the contracting officer, as well as the Texas State Comptroller's office on whether to include sales tax in its bid price, and the advice apparently

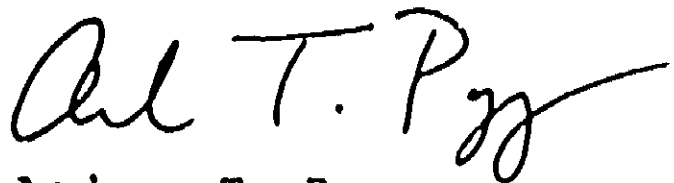
conflicted, the protester decided to include the phrase "[s]ales tax not included," merely to make a statement, and not to qualify the bid.

Unless otherwise specified in the IFB, the inclusion of the standard tax clause constitutes notice to all bidders that the bids will be evaluated on a tax-included basis. Louisville Lumber & Millwork, Inc., B-232592.2, Nov. 15, 1988, 88-2 CPD ¶ 479. Thus, the submission of a bid on a tax-excluded basis is viewed as evidence of the bidder's belief, absent definite information to the contrary, that taxes may be assessed, and of his unwillingness to assume payment of such taxes at the bid price. Id. Nevertheless, the bid still may be considered if the class and amount of the tax are specified elsewhere in the bid, because such information permits all bids to be evaluated on an equal basis. See J & W Welding and Fabrication, B-209430, Jan. 25, 1983, 83-1 CPD ¶ 92. Absent such information, the bid must be considered to be nonresponsive because it cannot be evaluated with other bids on an equal basis. See The Bruce Corp., B-231171, June 24, 1988, 88-1 CPD ¶ 610.

The protester's phrase "[s]ales tax not included" does not specify the class (i.e., whether state, local or other) and amount of tax that was excluded. Since the type and amount of sales tax was not specified, the bid is ambiguous as to what taxes are in fact excluded from the price bid. The notation could be reasonably interpreted as an indication that some unspecified amount of sales taxes may later be assessed, and of Sun's unwillingness to assume responsibility for payment of such taxes at its bid price. The bid was therefore properly rejected as nonresponsive.

Sun also argues that the government would save money by accepting its bid. Although rejection of the protester's bid may result in additional cost to the government in this procurement, we have consistently held that a nonresponsive bid may not be accepted even though it would result in savings to the government, since acceptance of such a bid would compromise the integrity of the competitive bidding system. See The Bruce Corp., supra.

The protest is dismissed.



Andrew T. Pogany  
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